

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark A. Kutney, Development Services Director 954-797-1101  
Prepared by: Marcie Oppenheimer Nolan, Planning Supervisor

**SUBJECT:** Resolution – Parking Space License Agreement  
Palomino Drive Park

**AFFECTED DISTRICT:** Mayor and District 4

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND CHELSEA AT IVANHOE, INC., FOR THE LEASING OF SIX PARKING SPACES AT THE ENTRANCE TO THE PALOMINO PARK DURING THE HOURS THE PARK IS CLOSED TO THE PUBLIC; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The Town Council approved project known as Warren Henry Jaguar at Regency Square at the December 17, 2003 Council meeting. This approval included a rezoning request from Broward County PUD to Planned Business District, B-3, master site plan, and developer's agreement. The developer's agreement detailed improvements that Warren Henry Jaguar would make to the adjacent roadway known as Palomino Drive. The agreement called for turning the Town's right-of-way into a public park including a jogging trail, half basketball court and landscape buffer along I-75. In addition, the developer agreed to provide six (6) parking spaces at the entrance to the park for use by the public. The residents of Chelsea at Ivanhoe requested that when the park was closed, that they be allowed to use the six (6) spaces. This agreement has been reviewed by the Town Attorney's office.

The Parking Space Lease Agreement details the following:

- The use of six (6) spaces during the hours that the park is closed.
- A yearly license fee of ten (\$10.00) for the use of the premises.
- Ability to relocate the gate into the parking area to eliminate 24-hour access to the parking spaces in the event security issues arise.

**PREVIOUS ACTIONS:** The Town Council approved the Developers Agreement between the Town, Warren Henry Automobile Inc, WCDP LLP, and Chelsea at Ivanhoe, Inc on December 17, 2003. This agreement created the park for Palomino Drive and approved the use of the six (6) parking spaces by Chelsea at Ivanhoe during the hours that the park will be closed. The Town Council agreed to this request by the applicant at this meeting.

**CONCURRENCES:** N/A

**FISCAL IMPACT:** The licensee agrees to pay an annual fee of ten (\$10.00) dollars for the use of the premises for the 99 years the lease will be in effect.

**RECOMMENDATION(S):** Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

**Attachment(s):** Resolution and Parking Space License Agreement

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND CHELSEA AT IVANHOE, INC., FOR THE LEASING OF SIX PARKING SPACES AT THE ENTRANCE TO THE PALOMINO PARK DURING THE HOURS THE PARK IS CLOSED TO THE PUBLIC; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of Davie approved the creation of a linear park within the right-of-way for Palomino Drive, and

WHEREAS, the design of the park includes six (6) parking spaces for use by the public when visiting said park, and

WHEREAS, the adjacent homeowners association, Chelsea at Ivanhoe, Inc., desires to utilize said spaces during the hours when the public park is closed, and

WHEREAS, the Town agrees to lease the six (6) parking spaces to Chelsea at Ivanhoe for an initial time period of 99 years, and

WHEREAS, Chelsea at Ivanhoe, Inc. agrees to an annual licensee fee of ten (\$10.00) dollars for the use of the premises, as defined in the Parking Space License Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into a Parking Space License Agreement, attached hereto as Exhibit "A", between Chelsea at Ivanhoe Homeowners Association, Inc, and the Town of Davie for the private use of six (6) parking spaces, subject to the terms and conditions of said Agreement.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2004.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

## **PARKING SPACE LICENSE AGREEMENT**

**THIS PARKING SPACE LICENSE AGREEMENT** ("Agreement") is made and entered into as of this \_\_\_\_ day of July, 2004, between the **TOWN OF DAVIE**, a municipal corporation of the state of Florida (hereinafter "Licensor") and **CHELSEA AT IVANHOE, INC.**, a Florida not-for-profit corporation ("Licensee").

### **WITNESSETH:**

**WHEREAS**, Warren Henry Automobile, Inc., a Florida corporation and WCDP LLP, a Florida limited liability partnership, have entered into a Development Agreement with the Town of Davie and Chelsea at Ivanhoe, Inc. to construct an automobile dealership in the Regency Shopping Center; and

**WHEREAS**, as a condition of the Development Agreement the Town of Davie obtained a community park adjacent to the Chelsea at Ivanhoe development (the "Park"); and

**WHEREAS**, as a further condition of the Development Agreement, the Park is designed to have six parking spaces; and

**WHEREAS**, Chelsea at Ivanhoe, Inc. has requested the private use of these parking spaces when the Park is closed; and

**WHEREAS**, the Town of Davie has agreed to allow Chelsea at Ivanhoe, Inc. to utilize the parking spaces when the Park is closed subject to the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, the sum of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I** **PREAMBLE**

The statements in the preamble are true and correct and are hereby incorporated by reference and made a part hereof.

### **ARTICLE II** **THE PREMISES**

2.1 Premises. Licensor licenses to Licensee, on the terms and conditions set forth herein, the Premises, consisting of the six (6) parking spaces, which service the Park, as delineated in the Development Agreement approved pursuant to Resolution No. \_\_\_\_.

ARTICLE III  
THE TERM

3.1 Term. This Agreement shall be for a term of ninety-nine (99) years, with four (4) options for Licensee to renew, commencing upon the completion of the Park (the "Commencement Date"). This Agreement shall renew automatically unless Licensors requests a written acknowledgement from Licensee that Licensee seeks to renew.

ARTICLE IV  
EXTENT OF LICENSE & USE

4.1 Extent of License. Licensee's license, and the terms and conditions contained herein, shall only be valid and enforceable when the Park is closed. At all other times, Licensors responsibilities concerning the Premises shall remain in full force and effect and Licensee shall have no exclusive right to utilize the Premises. At the time of this Agreement it is contemplated that the Park shall be closed from sunset through sunrise. The Park's hours of operation may be modified based upon the official hours of operation as established by the Town.

4.2 Use. The Premises are to be utilized solely for the purpose of providing six (6) additional parking spaces for motorized vehicles. Licensee shall not use or permit any portion of the Premises to be utilized for any business or purpose which is unlawful, disreputable or deemed to be extra hazardous or permit anything to be done which would in any way increase the rate of casualty or liability insurance coverage of the Premises.

ARTICLE V  
LICENSE FEE

5.1 Base License Fee. Licensee agrees to pay Licensors an annual license fee of ten dollars (\$10.00) for the use of the Premises. The annual license fee shall be payable within thirty (30) days from the receipt of an invoice from Licensors. The Licensors may, at Licensors's option, waive the annual license fees. Failure to send an invoice for a particular year's license fee by January 15 shall constitute a waiver of that year's license fee.

5.2 Prepaid License Fee. Licensee, at Licensee's option, may prepay the license fee set forth in Section 5.1. Licensors shall have the right to use, commingle, deplete, disburse for any and all purposes said prepaid rent, and Licensee shall have no right or claim to such amounts or any interest that may accrue thereon.

5.3 Late Charge. Licensors shall have the right to collect a late charge to defer Licensors administrative expense and overhead for any payment received more than five (5) days after it was due equal to five (5%) percent of the amount of the payment for any installment of rental or other sum required to be paid by Licensee to Licensors hereunder, which payment is not timely received; and, such fee shall not be deemed to be interest, penalty, or a measure of damages limiting Licensors's rights hereunder.

ARTICLE VI  
INSURANCE & INDEMNIFICATION

6.1 Insurance Requirement. Licensee shall maintain, at its own expense, Public Liability Insurance covering the licensed Premises and the resultant uses thereof in the amount of \$500,000, and will maintain property damage coverage for a minimum of \$500,000, the premium of which shall be paid prior to execution of this Agreement. Said insurance shall name the Town of Davie, Florida, as an additional insured; and shall provide that the City will receive notice of any cancellation or change in coverage. Licensee shall furnish Licensors with Certificates of Insurance. Any lapse of this coverage during the period of the License Agreement shall be grounds for termination of this Agreement.

6.2 Indemnification. In consideration of the use of Licensors's right-of-way, the entering of this Agreement by the Licensors, and other good and valuable consideration, the Licensee agrees that it will indemnify and hold harmless Licensors, from and against all claims, suits, actions, damages, or causes of

action arising as a direct result of this Agreement, and during the term of this Agreement, for any personal injury, loss of life or damage to the property sustained by reason of or as a result of the use of the Premises in connection with this Agreement, or by the actions of its agents, employees, and/or invitees, and from and against any orders, judgments, or decrees, which may be entered thereto, and from and against all costs, expenses and liabilities incurred in or by reason of the defense of any such claim, suit or action, at all tribunal levels, and the investigation thereof. Nothing in this Agreement shall be construed to affect in any way the Licensor's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in Section 768.28, Florida Statutes.

## ARTICLE VII LICENSOR'S COVENANTS AND AGREEMENTS

7.1 Peaceful Enjoyment. Licensee shall, and may peacefully have, hold and enjoy the Premises, subject to the terms hereof, provided that Licensee performs Licensee's covenants and agreements herein contained. Licensee's agents, servants, employees, guests and invitees, shall have the right to use the Premises for the purpose set forth herein.

## ARTICLE VIII LICENSEE'S COVENANTS AND AGREEMENTS

8.1 Payments by Licensee. Licensee covenants and agrees to pay all license fees and sums provided to be paid to Licensor hereunder at the time and in the manner herein provided.

8.2 Care of the Premises. Licensee covenants and agrees that it will not commit or allow any waste or damage to be committed on any portion of the Premises; ordinary wear and tear is excepted.

8.3 Repairs. Licensee covenants and agrees to repair or replace, at Licensee's sole cost and expense, any damage or injury done to the Premises, which is found to be caused as a direct result of Licensee's use pursuant to this license, subject to Section 4.1 above; provided, however, if Licensee fails to make such repairs, or replacements upon the receipt of sixty (60) days prior written notice from Licensor, Licensor may, at Licensor's option, make such repairs or replacements and Licensee shall repay the cost thereof to Licensor within thirty (30) days of receipt of a written demand.

8.4 Assignment or Subletting. Licensee covenants and agrees to not assign or to sublet this Agreement without the prior written consent of Licensor.

8.5 Alterations, Additions and Improvements. Licensee covenants and agrees not to make or allow to be made any improvements, alterations or physical additions in or to the Premises, without first obtaining the written consent of Licensor. All signs or lettering on the Premises, must be approved in writing by Licensor and must comply with any reasonable rule established by Licensor which may be amended from time to time at the sole discretion of Licensor. Any and all such alterations, physical additions or improvements, when made to the Premises by Licensee, shall at once become the Property of Licensor and shall be surrendered to Licensor upon termination of this Agreement; provided, however, this clause shall not apply to moveable equipment or furniture owned by Licensee.

8.6 Laws and Regulations. Licensee shall, at all times, comply with all laws, orders, rules and regulations (state, federal, municipal, and other agencies or bodies having jurisdiction thereof), relating to the use, condition or occupancy of the Premises. Licensee will conduct its business and control its agents, employees, invitees and visitors in such manner as not to create any nuisance or interfere with, annoy or disturb Licensor.

8.7 Entry for Repairs and Inspection. Licensee covenants and agrees to permit Licensor, Licensor's agents or representatives, to enter into and upon any part of the Premises to inspect same, clean or make repairs, alterations or additions thereto, as Licensor may deem necessary or desirable and Licensee shall not be entitled to any abatement or reduction of rent by reason thereof.

8.8 Crime Prevention. Licensee agrees that if the Town believes that the present location of the parking lot's security gate has contributed to an increase in unlawful activity on the Premises, then the Davie Town Council may revisit this Agreement and may, at its sole discretion, cause Licensee to remove and/or relocate the security gate at Licensee's sole cost and expense. The Town Council meeting to discuss this issue shall occur no earlier than thirty (30) days from Licensee's receipt of written notice.

## ARTICLE IX NON-COMPLIANCE & TERMINATION

9.1 Non-Compliance. If either party fails to comply with any of the obligations under this Agreement, either party may, at its option, terminate this Agreement by giving the other party written notice by registered or certified mail or in person. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If such failure cannot be reasonably cured within thirty (30) days, the length of such period shall be extended for the period reasonable required therefor if the curing thereof is with reasonable diligence and continuity. If the default is cured to the satisfaction of the other party, the notice shall be rescinded. Such satisfaction shall not be unreasonably withheld. If the default is not cured, this Agreement, at the non-defaulting party's option, may be terminated upon expiration of the time to cure.

9.2 Termination. In the event of Non-Compliance and termination by Licensor, Licensor may, at Licensor's sole option, require Licensee, at Licensee's sole cost and expense, to relocate the Park's security gate to prevent the Premises from being utilized during non-operational Park hours.

## ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Amendment. This Agreement may not be altered, changed, or amended, except by instrument in writing, signed by all parties hereto.

10.2 Waiver of Rights. Failure of either party to declare any default immediately upon the occurrence thereof, or delay in taking any action in connection therewith or acceptance of rental after same is due, shall not waive such default.

10.3 Force Majeure. Neither party shall be required to perform any term, condition nor covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lock outs, material or labor shortages, restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of either party, and which, by the exercise of due diligence, either party would be unable, wholly or in part, to prevent or overcome.

10.4 Miscellaneous. As used herein, the masculine or neuter genders shall be deemed to include all genders and the singular the plural and vice versa, except where any such construction would be unreasonable. This Agreement shall be construed under and in accordance with the laws of the State of Florida and all obligations of the parties hereunder are performable in Broward County, Florida. The headings are inserted for convenience only and shall not in any way vary the provisions they identify. If any provision of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions hereof and other applications hereof, shall not in any way be affected or impaired thereby.

10.5 Covenants. All agreements, obligations and undertakings of the parties shall be deemed to be covenants whether or not so denominated.

10.6 Notices. Except as may be otherwise specifically provided herein, all notices required or permitted hereunder shall be in writing and shall be deemed to be delivered when delivered personally or when deposited with the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the respective addresses set forth hereunder or at such other address as may have been theretofore specified by written notice delivered in accordance herewith.



LICENSOR: **TOWN OF DAVIE**  
Attn: Town Manager  
6591 Orange Drive  
Davie, Florida 33314

LICENSEE: **CHELSEA AT IVANHOE, INC.**  
Attn: Management  
17794 SW 2<sup>nd</sup> Street  
Pembroke Pines, Florida 33029

10.7 Partnership Disclaimer. Nothing contained in the agreement shall be construed as creating a partnership or joint venture between Licensor and Licensee, or cause either party to be responsible for any debts or obligations of the other party.

10.8 Mediation. The parties shall endeavor to resolve any and all claims arising from this Agreement by mediation which, the parties will mutually agree to otherwise, shall be conducted pursuant to the Mediation Rules of the American Arbitration Association currently in effect. A request for mediation shall be filed, in writing, with the other party to the Agreement. To the extent litigation is permitted under this Agreement, the request may be made concurrently with the filing of a legal or equitable proceedings, which shall be stayed pending the outcome of a mediation which will be completed within sixty (60) days from the date a request for mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claim shall be tolled from the date mediation is requested until completed. To the extent the parties cannot mutually select a mediator, within fifteen (15) days, from the date a request for mediation has been submitted, either party can request the American Arbitration Association to appoint a mediator with construction experience to serve as mediator. The mediator selected to serve shall be certified by the Florida Supreme Court. The mediation shall be conducted in Broward County, Florida. The prevailing party in any proceeding, including but not limited to mediation, shall be entitled to recover reasonable attorney's fees and costs at all tribunal levels.

10.9 Benefits. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, permitted assigns, heirs and legal representatives, as the case may be. This Agreement may be executed in counterparts, and each of such counterparts shall for all purposes be deemed to be an original and this Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

10.10 Access During Emergencies. In case of any emergency originating in or threatening the Premises, regardless of the time of day or whether the Licensee is present at the time of such emergency, the Licensor, its agents and employees, shall have the right to enter the Premises for the purpose of remedying or abating the cause of such emergency and such right of entry shall be immediate and without the necessity of prior notice to or consent of Licensee.

EXECUTED as of the day and year first above written.

TOWN OF DAVIE, LICENSOR

By \_\_\_\_\_  
Tom Truex, Mayor

Attest:

\_\_\_\_\_  
Russell Muniz, Town Clerk

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2004, by Tom Truex, as Mayor and Russell Muniz, as Town Clerk of the Town of Davie, respectively.

Personally Known \_\_\_\_ OR  
Produced Identification \_\_\_\_

\_\_\_\_\_  
Type of Identification

NOTARY PUBLIC - STATE OF FLORIDA

sign \_\_\_\_\_

print \_\_\_\_\_

My Commission expires:

CHELSEA AT IVANHOE HOMEOWNERS  
ASSOCIATION, INC.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Witness

By \_\_\_\_\_  
David Welborn, President

Attest: \_\_\_\_\_  
Deborah Lisiewski, Secretary

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2004, by DAVID WELBORN and DEBORAH LISIEWSKI, as President and Secretary, respectively, of CHELSEA AT IVANHOE HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation.

Personally Known \_\_\_\_ OR  
Produced Identification \_\_\_\_

\_\_\_\_\_  
Type of Identification

NOTARY PUBLIC - STATE OF FLORIDA

sign \_\_\_\_\_

print \_\_\_\_\_

My Commission expires: